

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KAREN A. BROWN,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,

Defendant.

No. C05-1718MJP

ORDER GRANTING PLAINTIFF'S  
MOTION FOR REMAND

This matter comes before the Court on Plaintiff's Motion for Remand to King County Superior Court. (Dkt. No. 6). Defendant United Parcel Service ("UPS") removed this action to federal court on October 11, 2005. (Dkt. No. 1), claiming that Plaintiff had fraudulently joined a non-diverse co-defendant in the state court action, only to dismiss him in a voluntary non-suit over a year later. Defendant claims that this dismissal should make the case removable to federal court. Plaintiff claims that there was no fraudulent joinder and that the non-diverse defendant was dismissed from the state court action because of legitimate concerns about the orderly prosecution of that case. Having considered Plaintiff's Motion, Defendant's Response, and all other pertinent papers and documents concerning this motion, the Court finds that Defendant has not met the heavy burden required to establish fraudulent joinder. For this reason, the Court GRANTS Plaintiff's motion and REMANDS this case to state court.

## BACKGROUND

1  
2 In July 2004, Karen Brown filed suit in King County Superior Court against her former  
3 employer UPS and her former supervisor Michael Yokoyama, alleging sexual harassment claims  
4 under the Washington Law Against Discrimination (“WLAD”). While both Ms. Brown and Mr.  
5 Yokoyama are Washington residents, Defendant UPS is a Georgia corporation.

6 On October 18, 2004, Ms. Brown received a right-to-sue letter from the EEOC regarding her  
7 federal discrimination claims. (Def’s Resp. at 3). On October 26, 2004, Ms. Brown amended her  
8 Complaint to include state claims of disability discrimination. (Id.) December 20, 2004 was Ms.  
9 Brown’s deadline for filing the Confirmation of Joinder of Parties, Claims, and Defenses in state  
10 Court. She did not join her federal claims to her state case at that time. (Id.).

11 Tuesday, January 18, 2005, was the last day on which Ms. Brown could file a case based on  
12 her federal discrimination claims. (Id. at 4). A few days earlier, on January 13, 2005, she sought a  
13 stipulation from UPS allowing her Title VII claims to be joined to the action in state court. UPS  
14 refused this stipulation and on January 18, 2005, Ms. Brown filed a suit based on her federal claims in  
15 the King County Superior Court. On February 9, 2005, UPS removed those claims to this Court.  
16 (Dkt. No. 14 at 3). These claims are now pending before Judge Lasnik as civil case number 05-  
17 00237RSL.

18 On September 9, 2005, Ms. Brown moved for voluntary non-suit against Mr. Yokoyama. On  
19 September 13, 2005, the Superior Court granted Ms. Brown’s motion for dismissal of Mr. Yokoyama  
20 from the state court case. (Dkt. No. 1 at 2-3). UPS filed its Notice of Removal of the state court  
21 action to this Court on October 11, 2005. (Id.). Defendant UPS is now alleging that Mr. Yokoyama  
22 was fraudulently joined to the prior state court action and for this reason asks the Court for equitable  
23 waiver of the one year deadline for removal of a case found in 28 U.S.C. §1446(b). Defendant claims  
24 that its allegation is supported by the time line on which Ms. Brown handled this case and the fact  
25 that Ms. Brown engaged in almost no discovery against Mr. Yokoyama. Ms. Brown asks for remand  
26 to state court and supports her argument by observing that UPS has not provided evidence that she

1 was unable to make out a cause of action against Mr. Yokoyama. Ms. Brown also argues that the  
2 fact that she sought and received dismissal without prejudice is favorable to remand and that the  
3 reason she sought non-suit against Mr. Yokoyama was related to the orderly prosecution of her case,  
4 rather than fraudulent intent.

#### 5 ANALYSIS

6 Removal of cases to federal court is governed by 28 U.S.C. §1446(b). In pertinent part, this  
7 statute provides:

8 If the case stated by the initial pleading is not removable, a notice of removal may be  
9 filed within thirty days after receipt by the defendant. . . of a copy of an amended  
10 pleading, motion, order or other paper from which it may first be ascertained that the  
11 case is one which is or has become removable, except that a case may not be removed  
12 on the basis of jurisdiction conferred by section 1332 of this title more than 1 year  
13 after commencement of this action. 28 U.S.C. §1446(b).

14 In the case at hand, the parties agree that Defendant's removal occurs after the one-year anniversary  
15 of the commencement of this action. Plaintiff brings her motion for remand on this basis. However,  
16 Defendant claims that Defendant Yokoyama was fraudulently joined to this action and Plaintiff never  
17 had any intent to prosecute her claims against him. Because of Plaintiff's alleged fraudulent joinder,  
18 Defendant states that this action was not removable to federal court until Plaintiff filed a voluntary  
19 non-suit against Mr. Yokoyama in September of this year. Because this type of chicanery should not  
20 be encouraged, says Defendant, the Court should recognize an equitable exception to section  
21 1446(b).

22 In the Ninth Circuit, joinder of a non-diverse defendant is viewed as fraudulent if the Plaintiff  
23 fails to state a cause of action against the non-diverse defendant and this omission is obvious under  
24 relevant state law. Morris v. Princess Cruises, Inc., 236 F. 3d 1061, 1067 (9<sup>th</sup> Cir. 2001). If  
25 plaintiff's claims against the non-diverse defendant are substantial enough to withstand the 12(b)(6)  
26 inquiry, however, the joinder is not deemed fraudulent. Sessions v. Chrysler Corp., 517 F. 2d. 759,  
761 (9<sup>th</sup> Cir. 1975). Nonetheless, defendants claiming fraudulent joinder should be given a chance to  
present evidence showing that the joinder was fraudulent. Morris, 236 F. 3d. at 761.

1 In the case at hand, Plaintiff's complaint alleges that Mr. Yokoyama, "personally witnessed,  
2 promoted, and participated in the sexual and retaliatory action against Brown." (Redaction to Am.  
3 Walton Decl., Ex. A. at 13, ¶3.25). Paragraphs 3.26 to 3.29 of the Complaint further elaborate on  
4 Mr. Yokoyama's alleged discriminatory actions toward Ms. Brown.(Id.). Although Mr. Yokoyama  
5 appears to be only one of several supervisors that Ms. Brown reported to, yet is the only individual  
6 defendant named in this action, there is nothing on the face of the Complaint that would lead the  
7 reader to believe that Ms. Brown's allegations against Mr. Yokoyama are frivolous. Under  
8 Washington's Law Against Discrimination, supervisors who act on behalf of companies that employ  
9 more than eight people can be held individually liable for their acts. Brown v. Scott Paper Worldwide  
10 Co., 143 Wn. 2d 349, 358, 20 P. 3d 921 (2001).

11 Before reaching a conclusion, however, on the validity of Plaintiff's claims against Mr.  
12 Yokoyama, the Court must also examine the evidence put forth by Defendant as to the allegedly  
13 fraudulent nature of the joinder of Mr. Yokoyama. Defendant notes that, although Ms. Brown  
14 deposed four current UPS managers and took three other 30(b)(6) depositions, her counsel never  
15 sought to depose Mr. Yokoyama. (Def's Opp. at 5). Defendant also observes that Ms. Brown  
16 propounded at least seven sets of interrogatories, but only directed one set to Mr. Yokoyama.  
17 Finally, Defendant cites to the way in which Plaintiff handled the deadlines in this case pertaining to  
18 the joinder of the federal causes of action to the state action. Defendant points out that Plaintiff  
19 waited until the last possible day (90 days after issuance of the EEOC right-to-sue letter) to file her  
20 federal claims. Defendant also finds it suspicious that Plaintiff waited until two months after the one  
21 year anniversary of filing the state case to dismiss the claims against Mr. Yokoyama.

22 Taken all together, these circumstances do raise a question about what Plaintiff's motives  
23 were in joining Mr. Yokoyama to her state Court action. However, "[t]he burden of proving a  
24 fraudulent joinder is a heavy one." Green v. Amerada Hess Corp., 707 F. 2d 201, 205 (5<sup>th</sup> Cir. 1982).  
25 Defendant must either show that Plaintiff can show no possible cause of action against the Mr.  
26 Yokoyama, or that there is "outright fraud" in the pleadings. Id. Defendant's submission does not


1 meet this burden, especially in light of the fact that Plaintiff asserts a plausible explanation for her  
2 behavior. Plaintiff states that her relationship with Mr. Yokoyama became disproportionately  
3 contentious and distracting to allow him to remain in this litigation. (Pl's Reply at 3-4). She states  
4 that it was a difficult decision to dismiss him, but that she sought a dismissal without prejudice to  
5 preserve her claims against him for the future. (Id.)

6 In light of these explanations, the lack of substantial evidence of fraud submitted by  
7 Defendant UPS, and the facial validity of Plaintiff's claims against Mr. Yokoyama, this Court does  
8 not find that Plaintiff's joinder of Mr. Yokoyama to this action was fraudulent under the governing  
9 law. Because Defendant has not proven fraudulent joinder, the Court need not reach the issue of  
10 whether or not an equitable exception to 28 U.S.C. §1446(b) deadlines exists in this Circuit.  
11 Accordingly, the Court REMANDS Plaintiff's state claims to state court.

#### 12 CONCLUSION

13 Defendant UPS has not met the heavy burden required to establish fraudulent joinder in this  
14 Circuit. For this reason, the Court need not reach the issue of whether or not this Circuit recognizes  
15 an equitable exception to the deadlines for removal 28 U.S.C. §1446(b). The Court GRANTS  
16 Plaintiff's motion and REMANDS Plaintiff's state claims against UPS to state Court.  
17 The Clerk of the Court shall direct a copy of this order be sent to all counsel of record.

18 Dated: November 10, 2005.

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23 Marsha J. Pechman  
24 United States District Judge  
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